

2-3-2016

State v. Gomez Appellant's Brief Dckt. 43535

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"State v. Gomez Appellant's Brief Dckt. 43535" (2016). *Not Reported*. 2756.
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IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,)	
)	
Plaintiff-Respondent,)	NO. 43535
)	
v.)	BONNEVILLE COUNTY NO.
)	CR 2013-4230
JUAN CARLOS GOMEZ,)	
)	APPELLANT'S BRIEF
Defendant-Appellant.)	
_____)	

STATEMENT OF THE CASE

Nature of the Case

Following the revocation of his probation, the district court ordered into execution Juan Carlos Gomez's unified sentence of seven years, with one year fixed, for statutory rape. Mr. Gomez contends the district court abused its discretion by revoking his probation and executing his sentence.

Statement of Facts and Course of Proceedings

Mr. Gomez was charged by Information with one count of statutory rape. (R., pp.34-35.) At the time of the alleged rape, Mr. Gomez was eighteen years old and the female was fifteen years old. (R., pp.34-35.) He claimed he and the female

engaged in consensual sex. (Presentence Investigation Report (“PSI”), p.3.) Mr. Gomez entered into a plea agreement with the State, pursuant to which he agreed to plead guilty and the State agreed to recommend probation if the psychosexual evaluation showed, among other things, that there were no other victims. (R., p.44.) During the psychosexual evaluation, Mr. Gomez admitted to sexually molesting his younger brother on one occasion. (PSI, p.43.)

At sentencing, the district court heard recommendations from counsel, and then sentenced Mr. Gomez to a unified term of seven years, with one year fixed, and retained jurisdiction for 365 days. (R., pp.67-68.) The judgment was entered on October 23, 2013. (R., pp.69-70.) The district court placed Mr. Gomez on probation for a period of four years following his successful completion of a retained jurisdiction program. (R., pp.78-81; Addendum to PSI (“APSI”), pp.1-19.)

On April 30, 2015, a report of probation violation was filed with the district court, alleging Mr. Gomez violated probation by purchasing a motor vehicle; drinking alcohol; visiting pornographic websites; using a cell phone with internet access and maintaining social media accounts; traveling out of district; and interacting with young children, as evidenced by photographs of Mr. Gomez with young children. (R., pp.91-92.) Mr. Gomez admitted to the allegations. (R., p.106.) At the disposition hearing, counsel for the State recommended that the district court revoke probation and retain jurisdiction again. (5/26/15 Tr., p.6, Ls.1-7.) Counsel for Mr. Gomez recommended retention on probation. (5/26/15 Tr., p.4, Ls.22-24.) The district court revoked Mr. Gomez’s probation and executed his unified sentence of seven years, with one year fixed. The judgment was entered on May 27, 2015. (R., pp.110-11.)

On June 11, 2015, Mr. Gomez filed a motion pursuant to Idaho Criminal Rule 35 (“Rule 35”) for a reduction of sentence. (R., pp.112-13.) The district court held a hearing on Mr. Gomez’s Rule 35 motion, and denied the motion by order dated August 11, 2015.¹ (R., pp.116-17, 118-19.) Mr. Gomez filed a timely notice of appeal on August 20, 2015. (R., pp.120-23.)

ISSUE

Did the district court abuse its discretion when it revoked Mr. Gomez’s probation and executed his unified sentence of seven years, with one year fixed?

ARGUMENT

The District Court Abused Its Discretion When It Revoked Mr. Gomez’s Probation And Executed His Unified Sentence of Seven Years, With One Year Fixed

“Once a probation violation has been established, the decision whether to revoke probation and impose a suspended sentence is within the discretion of the trial court.” *State v. Pierce*, 150 Idaho 1, 5 (2010) (citation omitted). “In determining whether to revoke probation, evidence of the defendant’s conduct before and during probation may be considered.” *State v. Roy*, 113 Idaho 388, 392 (Ct. App. 1987). The question is “whether probation is meeting the objective of rehabilitation while also providing adequate protection for society.” *State v. Upton*, 127 Idaho 274, 275 (Ct. App. 1995). Here, the district court abused its discretion when it revoked Mr. Gomez’s probation because probation was meeting the objective of rehabilitation, to the extent possible, and was not placing society at risk.

¹ Mr. Gomez did not provide any new or additional information to the district court in support of his Rule 35 motion. He does not challenge the district court’s denial of this motion in light of *State v. Huffman*, 144 Idaho 201, 203 (2007).

Mr. Gomez's probation was meeting the objective of rehabilitation considering his neurocognitive limitations. The psychologist who conducted Mr. Gomez's psychosexual evaluation concluded that Mr. Gomez suffers from executive dysfunction evident in "poor complex problem-solving and . . . inadequate self-awareness, self-monitoring, and self-regulation of cognition, emotion, and behavior." (PSI, p.37.) The psychologist noted that everyone who worked with Mr. Gomez "will need to have at least a rudimentary understanding of his neurocognitive deficits and their impact on his function." (PSI, p.38.) She cautioned that those who work with Mr. Gomez should avoid prematurely concluding "that his failure to comply with conditions or failure to complete treatment assignments . . . represent dissimulation or manipulation on his part when, more often, they will instead by aspects of the neurocognitive limitations identified here." (PSI, p.38.)

Mr. Gomez was only marginally successful on his rider, but the staff at the North Idaho Correctional Institution ("NICI") nonetheless recommended probation, and the district court followed this recommendation. (APSI, p.6; R., pp.83-84.) Significantly, the staff at the NICI was cognizant of Mr. Gomez's neurocognitive limitations, and adjusted their expectations accordingly. The APSI states that "[g]iven his low reading level and issues with cognitive functioning, he appears to have displayed good effort toward taking ownership of his behavior and engaging properly in the program." (APSI, p.4.) The difficulties that Mr. Gomez had on probation could well have been predicted by his psychosexual evaluation and by his performance on his rider. Importantly, they do not reflect that probation was not meeting the objective of rehabilitation; nor do they reflect that Mr. Gomez was willfully failing to comply with the terms of supervision. Instead,

they stem from Mr. Gomez's neurocognitive limitations and should not have resulted in revocation.

The district court also abused its discretion in revoking Mr. Gomez's probation because Mr. Gomez was not placing society at risk. On the contrary, the revocation of Mr. Gomez's probation may place society at greater risk over the long-term. Counsel for Mr. Gomez explained to the district court at the disposition hearing that Mr. Gomez did not want to be exposed to the level of criminal thinking that exists in prison. (5/26/15 Tr., p.4, Ls.11-16.) It is understandable that, given Mr. Gomez's limitations, he could be negatively affected by a term of incarceration, and may place society at greater risk upon his eventual release.

At the disposition hearing, Mr. Gomez admitted that his probation violations were "a big error" and stated he wanted to treat them as his "wake-up call." (5/26/15 Tr., p.6, Ls.20-24.) He told the district court, "I'm going to work my best and put my best effort into it." (5/26/15 Tr., p.7, Ls.15-16.) "I've been changing and . . . I've been seeing the change in myself." (5/26/15 Tr., p.8, Ls.15-16.) Mr. Gomez stated he was willing to do "whatever it takes to be back in the community" and "prove to people that . . . I can do it." (5/26/15 Tr., p.9, Ls.1-6.) In light of these statements, and for the reasons discussed above, the district court abused its discretion in revoking Mr. Gomez's probation and executing his unified sentence of seven years, with one year fixed.

CONCLUSION

Mr. Gomez requests that this Court vacate the district court's order revoking his probation and remand this case to the district court with instructions to place him back on probation.

DATED this 3rd day of February, 2016.

_____/s/_____
ANDREA W. REYNOLDS
Deputy State Appellate Public Defender

CERTIFICATE OF MAILING

I HEREBY CERTIFY that on this 3rd day of February, 2016, I served a true and correct copy of the foregoing APPELLANT'S BRIEF, by causing to be placed a copy thereof in the U.S. Mail, addressed to:

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ISCI
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DANE H WATKINS JR
DISTRICT COURT JUDGE
E-MAILED BRIEF

TRENT GRANT
BONNEVILLE COUNTY PUBLIC DEFENDER
E-MAILED BRIEF

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CRIMINAL DIVISION
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_____/s/_____
EVAN A. SMITH
Administrative Assistant

AWR/eas